

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation  
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

LUCKY COMPANY, a New Jersey partnership,  
ROBIN EASTERN, MUNCHKINS, a partnership,  
IRVING B. KAHN FOUNDATION, INC., a  
Delaware corporation, ALAN HAYES, WENDY  
WOLOSOFF-HAYES, BRIAN CLEARY, PETER  
J. CLEARY, LESLIE READ, SCOTT H. READ,  
CHARLES READ, JOSEPH S. EASTERN 2004  
IRREVOCABLE TRUST, a New Jersey trust,  
JOSEPH S. EASTERN, as trustee and as an  
individual, CARLY EASTERN, and ERIN  
EASTERN,

Defendants.

Adv. Pro. No. 10-04490 (SMB)

**STIPULATION AND ORDER DISMISSING WITHOUT  
PREJUDICE DEFENDANT ALAN HAYES**

**WHEREAS**, on December 2, 2010, Irving H. Picard (the “Trustee”), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa *et. seq.*, and the substantively consolidated estate of Bernard L. Madoff (“Madoff”) individually, filed a Complaint against

Lucky Company, Alan Hayes (“Hayes”), and others (the “Action”) (Adv. Pro. No. 10-04490 (SMB)); and

**WHEREAS**, the Trustee alleged that the defendants in the Action received certain avoidable transfers from BLMIS, among other claims; and

**WHEREAS**, defendant Hayes represents as follows:

1. In or about 2005, I invested \$20,000 with Lucky Company.
2. In or about 2006, I invested another \$17,000 with Lucky Company, making my total investment \$37,000. I did not invest any other money with Lucky Company.
3. I never withdrew or received any money from Lucky Company and never directed anyone to withdraw money on my behalf.
4. I am informed and believe that Lucky Company in turn invested with BLMIS. I never invested directly with BLMIS and never received any money from BLMIS.
5. I lost the entire \$37,000 I invested with Lucky Company.
6. I received K-1’s from Lucky Company. I never received K-1’s or any other documents from BLMIS.

**WHEREAS**, in support of defendant Hayes’s position, he has provided the following documentation to the Trustee:

1. 2005 Schedule K-1 issued by Lucky Company to defendant Hayes.
2. 2006 Schedule K-1 issued by Lucky Company to defendant Hayes.
3. 2007 Schedule K-1 issued by Lucky Company to defendant Hayes.
4. 2008 Schedule K-1 issued by Lucky Company to defendant Hayes.

**IT IS THEREFORE MUTUALLY AGREED AND STIPULATED**, by and between the Trustee and defendant Hayes as follows:

1. The representations in the foregoing “whereas” clauses shall be deemed material to this stipulation and agreement (this “Agreement”).

2. Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i) and Fed. R. Bankr. P. 7041, the Trustee and defendant Hayes hereby stipulate that the Trustee’s claims against defendant Hayes in the Action are dismissed without prejudice and without costs to either the Trustee or defendant Hayes.

3. Notwithstanding the foregoing, defendant Hayes and the Trustee agree that, in exchange for the Trustee’s entering into this Agreement and dismissing defendant Hayes, this Agreement shall also operate as, and is, a tolling agreement, whereby, should any court determine that defendant Hayes is a necessary party to the Action, or to perfect and/or enforce any of the Trustee’s claims in connection with the Action, or if any of the representations in this Agreement are false, the Trustee shall be permitted to assert any avoidance and/or other claims available under the Bankruptcy Code or SIPA with respect to defendant Hayes in connection with the BLMIS Account at issue in the Action, within six (6) months of such ruling or the period provided for under section 550(f) of the Bankruptcy Code, whichever is longer, determination or other notice by the Trustee, notwithstanding section 546(a) of the Bankruptcy Code, and defendant Hayes hereby agrees to waive any statute of limitations defense in any such actions or claims commenced by Trustee.

4. Upon the dismissal of defendant Hayes, the caption of the Action is hereby amended to delete defendant Hayes from the caption. The amended caption of the Action shall appear as indicated in Exhibit A to this stipulation.

5. This Agreement may be signed by the parties in any number of counterparts, each of which when so signed shall be an original, but all of which shall together constitute one and the same instrument. A signed facsimile, photostatic or electronic copy of this stipulation shall

be deemed an original.

6. Defendant Hayes has reviewed and discussed this Agreement with counsel.

(Remainder of page intentionally left blank.)

Dated: New York, New York  
April 24, 2014

Of Counsel:

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*Attorneys for Irving H. Picard, Trustee for the  
Substantively Consolidated SIPA Liquidation of  
Bernard L. Madoff Investment Securities LLC and  
the Estate of Bernard L. Madoff*

/s/ Alan Hayes  
Alan Hayes  
Defendant

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*Attorneys for Defendant Alan Hayes*

Dated: New York, New York  
April 29<sup>th</sup>, 2014

**SO ORDERED**

By: /s/ STUART M. BERNSTEIN  
**HONORABLE STUART M. BERNSTEIN**  
**UNITED STATES BANKRUPTCY JUDGE**

**EXHIBIT A**

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